



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re: Application No. 10/699,726 )  
)  
Filed: November 3, 2003 )  
)  
Applicants: Thomas SCHWEGLE et al. )  
)  
Title: AQUEOUS COMPOSITION )  
USEFUL FOR STABILIZING AND )  
TEXTURIZING DAIRY PRODUCTS )  
AND PROCESS FOR PREPARING )  
THE SAME )  
)  
Art Unit: 1761 )  
)  
Examiner: Leslie A. WONG )  
)  
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)  
Attorney Docket No.: 1410/79559 )  
)  
Customer No.: 48940 )

**Confirmation No. 3543**

CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this date.

6/23/2005 \_\_\_\_\_  
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**APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37**

Sir:

This Appeal Brief is filed pursuant to the "Notice of Appeal From the Primary Examiner to the Board of Patent Appeals and Interferences" mailed on March 1, 2005 and under 37 C.F.R. § 41.37, the response time thereto being extended by the attached Petition For Extension Of Time to and including July 1, 2005. This brief is being filed in triplicate.

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Application No. 10/699,726  
APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37 dated June 23, 2005  
Reply to Final Office Action of December 13, 2004  
and Advisory Action of March 25, 2005

**I. REAL PARTY IN INTEREST**

Kraft Foods R&D, Inc. is the assignee of the above-named patent application.

**II. RELATED APPEALS AND INTERFERENCES**

None.

**III. STATUS OF CLAIMS**

Claims 1-19 are pending. Appellants appeal the final rejection of claims 1-19. Claims 1 and 12 are the pending independent claims that are at issue in this appeal. Section VIII is a claims appendix that presents the claims at issue in the appeal.

**IV. STATUS OF AMENDMENTS**

No amendments after the final rejection have been submitted to or entered by the Examiner.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

In one embodiment, the invention of independent claim 1 is to an aqueous composition that may be used as a stabilizing and texturizing agent in dairy products. (Specification, Page 1, lines 9-10.) The aqueous composition reduces or completely prevents uncontrolled protein agglomeration in protein-containing dairy products during heat-treatments, such as hot-filling. (*Id.*, Page 2, lines 2-4.) As a result, a dairy product incorporating the claimed aqueous composition can be used in a hot-fill process having the advantage of extended shelf-life, as well as in a cold-fill process having the advantage of providing high-quality product texture without using an aseptic processing system. (*Id.*, lines 4-7.)

Application No. 10/699,726

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37 dated June 23, 2005

Reply to Final Office Action of December 13, 2004

and Advisory Action of March 25, 2005

The aqueous composition of claim 1 is produced by heating an aqueous composition that includes 1.5 percent to 45 weight percent whey protein concentrate, 1 to 15 weight percent starch, 0.15 to 6 weight percent of a first hydrocolloid, and 0.03 to 3 weight percent of a second hydrocolloid. (*Id.*, lines 13-18.) The composition is heated to a temperature from 60 to 100°C for 1 to 120 minutes. (*Id.*, lines 18-19.)

In another embodiment, the invention of independent claim 12 is to a food composition that includes a dairy product base and the aqueous composition as described above for the invention of claim 1. (*Id.*, Page 4, lines 15-17.) In one form, the dairy product base is 30 to 80 weight percent and the aqueous composition is 70 to 20 weight percent of the food composition. (*Id.*, lines 17-20.)

The resulting food composition exhibits improved texture and mouth-feel because no uncontrolled or undesired protein agglomeration occurs during processing, especially after heat-treatment or hot-filling. (*Id.*, Page 5, lines 14-16.) The food composition formed using the hot-fill process results in a shelf-life extension, usually by one to three months, without being forced to use an aseptic, processing system while maintaining the smooth product texture. (*Id.*, lines 20-24.)

## VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL<sup>1/</sup>

- A. Would claims 1-11 have been obvious to one of ordinary skill in the art at the time the invention was made over Dunn et al. (U.S. Patent No. 5,614,243) in view of Asher et al. (U.S. Patent No. 5,215,777)?
- B. Would claims 12-19 have been obvious to one of ordinary skill in the art at the time the invention was made over Dunn et al. in view of Asher et al.?

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<sup>1/</sup> The Office Actions considered all 19 claims under a single rejection but failed to consider any differences between independent claims 1 and 12; as a result, Applicants have separated each independent claim into a distinct ground of rejection to be reviewed upon appeal.

## VII. ARGUMENT

The Final Office Action has failed to establish a *prima facie* case of obviousness for the independent claims 1 and 12, which are both process-by-product claims.

Indeed, the Final Office Action and Advisory Action has failed to consider the structure implied by the process steps of the cited references as required by the Manual of Patent Examining Procedure, Section 2113. As further detailed below, the manufacturing steps in each of the cited prior art references imparts distinctive structural characteristics to the final product. Accordingly, because of such distinctive structural characteristics, the Applicants respectfully submit there is insufficient motivation to combine the cited references, and if combined, they do not render the claims obvious because they do not teach all of the claim limitations.

### A. Cited References

#### 1. Dunn et al. [Dunn] (U.S. Patent No. 5,614,243)

Dunn discloses a texturizing agent that includes an insoluble microparticle (*e.g.*, titanium dioxide), a gum (*e.g.*, xanthan gum) and a starch (*e.g.*, pregelatinized starch) in the form of a "complex" in which the insoluble microparticle has been stabilized or entrapped therein. (Dunn, Abstract.) Whey proteins are disclosed, but only as an optional insoluble microparticle. (*Id.*, Column 3, lines 32-33.) Dunn specifically discloses that the "complex" is an intimately associated relationship between the starch, gum, and insoluble microparticle. (*Id.*, Column 3, lines 14-16.) On the other hand, Dunn also discloses in several passages, which are discussed in more detail below (see VII.C.1 and VII.C.2), that the "complex" is only formed if specific processing conditions are followed. In fact, Dunn further teaches that if the specific processing conditions are not followed, then the complex is not formed, and

Application No. 10/699,726  
APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37 dated June 23, 2005  
Reply to Final Office Action of December 13, 2004  
and Advisory Action of March 25, 2005

the resulting product "exhibits grittiness and poor mouthfeel," which is opposite of the claimed invention. (*See, e.g., id.*, Column 5, lines 15-24.)

Dunn also discloses the use of his texturizing agent in a food formulation. (*Id.*, Column 8, lines 25-28.) However, Dunn only discloses the use of between 0.1 and about 10 percent, and preferably, between 2 and about 6 percent of its texturizing agent in a food formulation, which is significantly less than the claimed amount. (*Id.*)

**2. Asher et al. [Asher] (U.S. Patent No. 5,215,777)**

Asher does not disclose a hot-fill process, but a method for producing an ice-cream, which involves a freezing step with an extrusion of the ice cream at about -6 C; again, opposite of the claimed invention. (Asher, Column 4, lines 15-24.) The ice cream of Asher is produced by forming a mix of about 2 to about 7 percent of whey protein concentrate, about 1 to about 10 percent skim milk solids, about 5 to about 8 percent sucrose solids, about 2 to about 6 percent corn syrup solids, about 7 to about 12 percent high fructose corn syrup solids, about 0.01 to about 0.05 percent carrageenan, and about 0.01 to about 0.25 guar gum. (*Id.*, Column 2, lines 21-35.) The starch, stabilizers (*i.e.*, gum), and whey protein concentrate only provide about 10 percent of the ice cream. (*See, e.g., id.*, Column 4, lines 30-50.)

**B. Examiner's art rejections**

After the Final Office Action, an Advisory Action dated March 25, 2005 was provided that rejected the claims for the reasons already of record.

The Final Office Action, which was dated December 13, 2004, rejected claims 1-19 under 35 U.S.C. § 103(a) as being unpatentable over Dunn in view of Asher for the reasons of record set forth in the Office Action dated June 28, 2004. In addition,

Application No. 10/699,726  
APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37 dated June 23, 2005  
Reply to Final Office Action of December 13, 2004  
and Advisory Action of March 25, 2005

the Final Office Action further stated "[i]t would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use whey protein concentrate as taught by Asher et al in that of Dunn et al because whey protein concentrate is a conventional source of whey protein" (12/13/04 Final Office Action, Page 2) and that there was motivation to combine Dunn and Asher because "both references teach the use of whey proteins in dairy compositions." (*Id.*)

The Office Action dated June 28, 2004 also noted "[i]n the absence of unexpected results, it is not seen how the claimed invention differs from the teachings of the prior art. Applicants' claims are drawn to a combination of known components which produces expected results . . . ." (6/28/04 Office Action, Page 2.)

**C. Claims 1-11 would not have been obvious over Dunn in view of Asher to one of ordinary skill in the art at the time the invention was made**

Independent claim 1 is as follows:

An aqueous composition for use as a stabilizing and texturizing agent in dairy products, said aqueous composition being prepared by a process comprising heating an aqueous mixture comprising:

1.5 to 45 wt.% of whey protein concentrate, calculated as dried product,

1 to 15 wt.% of starch,

0.15 to 6 wt.% of a first hydrocolloid, and

0.03 to 3 wt.% of a second hydrocolloid

to a temperature in the range of 60 to 100°C for a period of 1 to 120 minutes and wherein dairy products containing the aqueous composition can be packaged using a hot-fill process and maintain a smooth texture after the hot-fill process.

The claimed invention includes process limitations that impart distinctive characteristics to the final product. Therefore, as required in Section 2113 of the Manual of Patent Examining Procedure, such processing limitations must be

Application No. 10/699,726

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37 dated June 23, 2005

Reply to Final Office Action of December 13, 2004

and Advisory Action of March 25, 2005

considered when assessing the patentability of product-by-process claims over the prior art. The Advisory Action and Final Office action failed to consider such distinctive process limitations on the final claimed product.

**1. Dunn expressly discloses that specific processing temperatures must be followed or an unacceptable product is formed.**

According to the specific teachings of Dunn, his texturizing agent (i.e., starch, gum, and insoluble microparticle) must be processed at specific temperatures otherwise a product "exhibit[ing] grittiness and poor mouthfeel" is obtained. (Dunn, Column 5, line 23.) Dunn requires temperatures between 125° to 150°C (*Id.*, Column 4, lines 66-67) and discloses several times that if such conditions are not followed, a product having the gritty and poor mouthfeel is obtained. The products of independent claims 1 and 12, on the other hand, require much lower temperatures (i.e., between 60° and 100°C). Therefore, according to the teachings of Dunn, the claimed products should have an unacceptable texture. Accordingly, Dunn teaches away from the present invention.

The following six different passages of Dunn illustrate how the process of Dunn imparts distinctive structural characteristics to the final product:

For the purposes of the present invention, the term "texturizing agent" will be used to describe products derived from high amylose (>30 % amylose as determined by iodine binding) starch that have been processed *under specific conditions of temperature, pressure, and shear . . .* (*Id.*, Column 3, lines 1-5.) (Emphasis added.)

The method for producing the novel texturing agents generally involves: . . . adding a gum and optionally an insoluble microparticle (depending upon the final texturizing agent desired) *under controlled conditions of temperature and shear*; . . . and cooling of the fully solubilized starch *under controlled conditions of time, temperature and shear* to yield a thixotropic gel. (*Id.*, Column 4, lines 14-27.) (Emphasis added.)

Application No. 10/699,726

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37 dated June 23, 2005

Reply to Final Office Action of December 13, 2004

and Advisory Action of March 25, 2005

The rate of heating, time duration at the final cook temperature (i.e., the temperature above the gelatinization temperature of starch), and shear rate in the reactor vessel *affect the properties of the final product*. (*Id.*, Column 4, lines 61-64.) (Emphasis added.)

*Variations in initial temperature and rate of heating affect the properties of the final product* even through the total time at 138°C is essentially unchanged. (*Id.*, Column 5, lines 3-5.) (Emphasis added.)

The importance of the final temperature used in the present invention is illustrated by the following comparison. High amylose starch was heated to a maximum temperature in the reactor of 121°C for 8 hours in the absence of shear. *Even though the cooking process is carried out for a much longer time period than that of the present invention, this lower temperature does not allow for complete solubilization and disruption of the starch granules resulting in a product that contains relatively large particulates that exhibit grittiness and poor mouthfeel when tasted directly*. In contrast, the higher temperature used in the present process insures full disruption of the starch granules and solubilization of the high amylose starch which yield a much smoother product. (*Id.*, Column 5, lines 14-27.) (Emphasis added.)

*Temperatures lower than about 85°C will result in inefficient filtration as the starch retrogrades*. (*Id.*, Column 6, lines 4-5.) (Emphasis added.)

Accordingly, in light of the above disclosures of Dunn, the Applicants respectfully submit that the process of Dunn and the claimed process limitations each impart distinct structural characteristics to the final product. According to Dunn, the claimed process limitations would form an unacceptable product. The Advisory Action and the Final Office Action completely ignored these process distinctions. Moreover, these Office Actions also ignore the fact that Dunn teaches away from the present invention.



**2 Dunn also discloses that his specific processing steps form a unique "complex" that is non-existent if the process steps are not followed.**

The specific processing conditions of Dunn form a "complex" of the starch, gum, and titanium dioxide that imparts the textural properties to the final product. (Dunn, Column 2, lines 26-30.) Dunn discloses that if the processing conditions are not followed, then such complex is not formed, and, in which case, the final product has unacceptable characteristics. Specifically, Dunn states that:

[a]s shown in the example section, a low fat mayonnaise was prepared with starch/xanthan gum/titanium dioxide in the form of a complex and as a simple admixture of these ingredients. The product formulated with the complex was more fat-like in texture, less pasty and smoother in mouthfeel than the sample prepared with the admixture . . . . *Thus, complexation of the starch, gum and insoluble microparticle components is important to achieving a texturizing agent that can satisfactorily replace fat in foods to closely approximate their full-fat counterparts.* (*Id.*, Column 8, lines 40-53.) (Emphasis added.)

Accordingly, the required processing steps of Dunn, as described in Section 1 above, form a unique complex between the ingredients, which Dunn states is responsible for the texture and mouthfeel properties of the final product.

Dunn also defines the required "complex." According to Dunn, the required complex is:

an intimately associated relationship between the starch, gum and optionally the insoluble microparticle. For example, as shown by scanning electron microscopy (SEM), titanium dioxide particles are incorporated into and become part of the starch/gum matrix. SEM results also show that due to the incorporation of titanium dioxide particles into the starch, the microstructure of the starch/gum is disrupted. (*Id.*, Column 3, lines 14-21.)

The processing steps of Dunn and resulting "complex", therefore, impart unique structural characteristics to the final product.

The claimed process limitations, on the other hand, result in a product that is distinct from the product of Dunn. At a minimum, the claimed invention uses lower temperatures; therefore, the claimed composition, according to specific teachings in Dunn, should not include the specific complex of the starch, gum, and insoluble microparticle as required by Dunn. The process limitations and "complex" of Dunn suggest a clear structural distinction with the aqueous composition of claim 1. The Advisory Action and Final Office Action also failed to consider the unique "complex" that the process of Dunn forms as a result of its required processing steps.

**3. Dunn would not be combined with Asher because both Dunn and Asher teach away from the proposed combination.**

Applicants also continue to disagree that Dunn and Asher can be combined to arrive at the aqueous composition of independent claim 1. The Applicants respectfully submit that the Advisory Action and the Final Office Action have ignored conflicting teachings in the references and have not provided any reasonable expectation of success in the combination.

As discussed above, Dunn teaches a specific method to arrived at its product and indicates that deviation from such method produces a product having a gritty and poor mouthfeel (*see* Section 1 and 2 above); thus, Dunn teaches away from being modified or combined with Asher as suggested by the Final Office Action. Asher teaches different process steps, different ingredients, and lower temperatures, which, according to Dunn, would also not produce an acceptable product.

Moreover, Asher would also not be combined with Dunn because each reference teaches different amounts of gums/stabilizers, and Asher specifically teaches away from increasing the level of such stabilizers. For example, Asher

discloses "[a]nother concern is to minimize the amount of stabilizers to avoid undesirable characteristics produced by relatively high amounts of stabilizers frequently found in prior art low and non-fat ice creams."<sup>2/</sup> (Asher, Column 2, lines 3-6.) Specifically, Asher discloses stabilizer amounts ranging from about 0.1% (*Id.*, Column 2, lines 11-12) to about 1.1% (*Id.*, Column 4, lines 38-45.)<sup>3/</sup> Dunn, on the other hand, discloses the use of xanthan gum in the range of about 2 to about 10% (Dunn, Column 3, lines 45-50), which far exceeds the ranges disclosed by Asher.

Based on the specific disclosures in Dunn and Asher, one skilled in the art would not be motivated to combine the references in the manner suggested by the Final Office Action because there is no reasonable expectation of success in the combination. Indeed, there is a reasonable expectation of failing because each reference teaches away from such combination.

As a result, because there is no expectation of success in the proposed combination of Dunn and Asher, and the process of each discloses distinct characteristics in their final products, the Applicants respectfully request withdrawal of the rejection to claims 1-11.

**D. Claims 12-19 would not have been obvious to one of ordinary skill in the art at the time the invention was made over Dunn in view of Asher.**

Independent claim 12 is to a food composition that includes the process limitations to the aqueous composition similar to independent claim 1; however,

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<sup>2/</sup> Asher defines stabilizers as guar gum, carrageenan, locust bean gum, micro-crystalline cellulose gum, carboxy-methyl cellulose gum, xanthan gum, and emulsifiers, such as mono-diglycerides. (Column 3, lines 65-68.)

<sup>3/</sup> The Table in Column 4 lists the amounts in the second dry blend, which in Column 3, lines 65-68, are disclosed as stabilizers.

Application No. 10/699,726  
APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37 dated June 23, 2005  
Reply to Final Office Action of December 13, 2004  
and Advisory Action of March 25, 2005

independent claim 12 also requires the food composition to include between "70 to 20 wt. % of the aqueous composition." Independent claim 12 is as follows:

A food composition comprising a dairy product base and an aqueous composition in a ratio, based on the food composition, of 30 to 80 wt.% of the dairy product base and 70 to 20 wt.% of the aqueous composition, wherein the aqueous composition is prepared by a process comprising heating an aqueous mixture comprising:  
1.5 to 45 wt.% of whey protein concentrate, calculated as dried product,  
1 to 15 wt.% of starch,  
0.15 to 6 wt.% of a first hydrocolloid, and  
0.03 to 3 wt.% of a second hydrocolloid  
to a temperature in the range of 60 to 100°C for a period of 1 to 120 minutes and wherein the food composition can be packaged using a hot-fill process and maintain a smooth texture after the hot-fill process.

**1. Dunn and Asher impart distinctive structural characteristics to the final product**

As with independent claim 1, the Office Actions failed to consider the how the process steps of the cited references impart distinctive characteristics to the final products of independent claim 12. Accordingly, the discussion of Section C is also applicable to claims 12-19 and incorporated herein in its entirety. For the same reasons as discussed in Section C, this rejection is improper and should be withdrawn. Applicants also wish to point out the following arguments:

**2. The combination of Dunn and Asher disclose food products having significantly less texturizing and stabilizing agents than required by independent claim 12**

While each of the references disclose the use of similar components in a food, neither reference teaches or suggests the claimed food composition (*i.e.*,

Application No. 10/699,726  
APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37 dated June 23, 2005  
Reply to Final Office Action of December 13, 2004  
and Advisory Action of March 25, 2005

specifically 70 to 20 weight percent of the aqueous composition). To the contrary, the cited references only disclose half the amount of the aqueous composition or equivalent ingredients. At the same time, the cited references also teach away from increasing the amount of such aqueous composition in their foods.

For example, Dunn discloses between 0.1 and about 10 percent of its texturizing agent in a food formulation. (Dunn, Column 8, lines 25-28.) Asher also only discloses about 10% of an equivalent component.<sup>4/</sup> The claimed food composition requires, at a minimum, 20% of the aqueous composition. Therefore, the cited references only disclose half of such component.

In addition, based on the specific teachings of each cited reference, it would not be obvious to merely increase such levels of the aqueous composition to arrive at the claimed invention. Asher teaches away from increasing the level of stabilizer components because of the negative effects of such modification. As discussed in Section C(3) above, Asher specifically discloses that higher stabilizer levels results in low-fat foods having "undesirable characteristics." (Asher, Column 2, lines 3-6.) Such undesirable characteristics include a crumbly texture, weak body, aftertaste, or gummy mouth feel. (*Id.*, Column 1, lines 24-30 and lines 34-39.) Dunn, on the other hand, teaches a specific method that, if deviated from, produces unacceptable results (*See*, Section C above). Increasing the level of stabilizer components of either reference, therefore, would be unobvious because such modification is against the disclosures of each reference.

Accordingly, the process limitations of independent claim 12 achieves a food composition having a smooth texture using amounts of ingredients disclosed by the

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<sup>4/</sup> Asher discloses an ice cream that separately includes about 2.5% starch, 0.5 % stabilizers (i.e. gum), and 7% whey protein concentrate that provide about 10% of the ice cream (Column 4, lines 30-50.)

Application No. 10/699,726  
APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37 dated June 23, 2005  
Reply to Final Office Action of December 13, 2004  
and Advisory Action of March 25, 2005

cited prior art as producing unacceptable results. The Advisory Action and Final Office Action failed to consider the fact that the cited references do not disclose the claimed amounts (*i.e.*, 70 to 20 weight percent) of the aqueous composition. The Applicants also respectfully request that the rejections to claims 12-19 be withdrawn.

**E. Applicants have disclosed unexpected results with the claimed invention**

The June 28, 2004 Office Action, which also forms the basis for the Final Office Action and the Advisory Action, also stated that Applicants' invention did not show unexpected results. The Applicants respectfully submit that the specification does indeed include unexpected results.

For instance, the resulting food compositions containing the claimed aqueous composition of this invention exhibit "improved texture and, therefore, mouth-feel, as no uncontrolled or undesired protein agglomeration occurs during processing, e.g. heat-treatment or hot-filling." (Specification, Page 5, lines 14-16.) Thus, Applicants have provided an aqueous composition that acts as a stabilizer and texturizing agent, which when combined with a dairy product allow the dairy product to be packaged using a hot-fill process and thereby obtain increased shelf-life without the loss of texture. Applicants respectfully submit that these features are surprising results.

Indeed, and as detailed above, the cited art relied upon by the Examiner actually teaches away from the present invention because the processes of Dunn and Asher disclose that the claimed inventions would produce unacceptable products. Each reference also specifically discloses if they were modified to arrive at the claimed invention, they would produce a product having a gritty and poor mouthfeel. (See discussion, Sections C and D.)

Application No. 10/699,726  
APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37 dated June 23, 2005  
Reply to Final Office Action of December 13, 2004  
and Advisory Action of March 25, 2005

Applicants respectfully request that the rejections to claims 1-19 also be withdrawn in light of the evidence of unexpected results.

### **VIII. CLAIMS APPENDIX**

1. An aqueous composition for use as a stabilizing and texturizing agent in dairy products, said aqueous composition being prepared by a process comprising heating an aqueous mixture comprising:

1.5 to 45 wt.% of whey protein concentrate, calculated as dried product,

1 to 15 wt.% of starch,

0.15 to 6 wt.% of a first hydrocolloid, and

0.03 to 3 wt.% of a second hydrocolloid

to a temperature in the range of 60 to 100°C for a period of 1 to 120 minutes and wherein dairy products containing the aqueous composition can be packaged using a hot-fill process and maintain a smooth texture after the hot-fill process.

2. The aqueous composition of claim 1, wherein the whey protein concentrate is in liquid or powder form.

3. The aqueous composition of claim 1, wherein the starch is selected from one or more of waxy maize starch, corn starch, pea starch, wheat starch and potato starch.

4. The aqueous composition of claim 2, wherein the starch is selected from one or more of waxy maize starch, corn starch, pea starch, wheat starch and potato starch.

Application No. 10/699,726  
APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37 dated June 23, 2005  
Reply to Final Office Action of December 13, 2004  
and Advisory Action of March 25, 2005

5. The aqueous composition of claim 1, wherein the first hydrocolloid is selected from one or more gums and the second hydrocolloid is selected from one or more gel-forming heteropolysaccharides.

6. The aqueous composition of claim 2, wherein the first hydrocolloid is selected from one or more gums and the second hydrocolloid is selected from one or more gel-forming heteropolysaccharides.

7. The aqueous composition of claim 5, wherein the first hydrocolloid is selected from one or more gums and the second hydrocolloid is selected from one or more gel-forming heteropolysaccharides.

8. The aqueous composition of claim 5, wherein the gum is carob bean gum, guar gum, gum arabic, xanthan gum or tara bean gum.

9. The aqueous composition of claim 7, wherein the gel-forming heteropolysaccharide is carrageenan or agar.

10. The aqueous composition of claim 8, wherein the gel-forming heteropolysaccharide is carrageenan or agar.

11. The aqueous composition of claims 1, wherein the process is carried out under pressure.



Application No. 10/699,726  
APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37 dated June 23, 2005  
Reply to Final Office Action of December 13, 2004  
and Advisory Action of March 25, 2005

12. A food composition comprising a dairy product base and an aqueous composition in a ratio, based on the food composition, of  
30 to 80 wt.% of the dairy product base and  
70 to 20 wt.% of the aqueous composition,  
wherein the aqueous composition is prepared by a process comprising heating an aqueous mixture comprising:  
1.5 to 45 wt.% of whey protein concentrate, calculated as dried product,  
1 to 15 wt.% of starch,  
0.15 to 6 wt.% of a first hydrocolloid, and  
0.03 to 3 wt.% of a second hydrocolloid  
to a temperature in the range of 60 to 100°C for a period of 1 to 120 minutes and wherein the food composition can be packaged using a hot-fill process and maintain a smooth texture after the hot-fill process.

13. The food composition of claim 12, wherein the dairy product base is selected from bases for yogurt, sour milk, cream cheese and soft white cheese.

14. The food composition of claim 12, wherein the dairy product base is a low fat dairy product base.

15. The food composition of claim 13, wherein the dairy product base is a low fat dairy product base.

16. The food composition of claim 12, wherein the dairy product base is a high protein dairy product base.

Application No. 10/699,726  
APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37 dated June 23, 2005  
Reply to Final Office Action of December 13, 2004  
and Advisory Action of March 25, 2005

17. The food composition claim 13, wherein the dairy product base is a high protein dairy product base.

18. The food composition of claim 12, wherein the dairy product base is low fat/high protein soft white cheese base.

19. The food composition of claim 13, wherein the dairy product base is low fat/high protein soft white cheese base.

**IX. EVIDENCE APPENDIX**

None.

**X. RELATED PROCEEDINGS APPENDIX**

None.

**XI. CONCLUSION**

In view of the foregoing discussion, the applicants respectfully request reversal of the rejection of the rejected, pending claims.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

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Date: June 23, 2005

Application No. 10/699,726  
APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37 dated June 23, 2005  
Reply to Final Office Action of December 13, 2004  
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